

UTAH WORKS PROGRAM ACT

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE**General Description:**

This bill enacts the Utah Works Program Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a state nonrefundable tax credit for investments by Utah Works funds in eligible businesses;
- ▶ authorizes the state to approve tax credits on up to \$30,000,000 invested in eligible businesses in the state;
- ▶ provides the requirements for receiving a tax credit certificate from the Governor's Office of Economic Development related to a contribution to a Utah Works fund investing in eligible businesses;
- ▶ provides the reporting requirements for a Utah Works fund investing in eligible businesses; and
- ▶ provides the requirements for a Utah Works fund exiting the program.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

59-7-624, Utah Code Annotated 1953
59-10-1041, Utah Code Annotated 1953
63N-2-901, Utah Code Annotated 1953
63N-2-902, Utah Code Annotated 1953
63N-2-903, Utah Code Annotated 1953
63N-2-904, Utah Code Annotated 1953
63N-2-905, Utah Code Annotated 1953
63N-2-906, Utah Code Annotated 1953
63N-2-907, Utah Code Annotated 1953
63N-2-908, Utah Code Annotated 1953
63N-2-909, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-624** is enacted to read:

59-7-624. Nonrefundable job creation tax credit.

(1) As used in this section, "office" means the Governor's Office of Economic Development created in Section **63N-1-201**.

(2) Subject to the other provisions of this section, a taxpayer may claim a nonrefundable tax credit for job creation as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Utah Works Program Act, to the taxpayer for the taxable year.

(4) A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

Section 2. Section **59-10-1041** is enacted to read:

59-10-1041. Nonrefundable job creation tax credit.

(1) As used in this section, "office" means the Governor's Office of Economic Development created in Section **63N-1-201**.

(2) Subject to the other provisions of this section, a taxpayer may claim a

nonrefundable tax credit for job creation as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Utah Works Program Act, to the taxpayer for the taxable year.

(4) A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

Section 3. Section 63N-2-901 is enacted to read:

Part 9. Utah Works Program Act

63N-2-901. Title.

This part is known as the "Utah Works Program Act."

Section 4. Section 63N-2-902 is enacted to read:

63N-2-902. Definitions.

As used in this part:

(1) (a) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(b) For the purposes of this part, a person controls another person if the person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day-to-day operations of the controlled person by contract or by law.

(2) "Claimant" means a resident or nonresident person that has state taxable income.

(3) "Closing date" means the date on which a Utah Works fund has collected all of the investments described in Subsection 63N-2-903(7).

(4) "Credit-eligible contribution" means an investment of cash by a claimant in a Utah Works fund that:

(a) is or will be eligible for a tax credit as evidenced by notification issued by the office under Subsection 63N-2-903(5)(c); and

(b) purchases an equity interest in the Utah Works fund or purchases, at par value or premium, a debt instrument issued by the Utah Works fund that has a maturity date at least five years after the closing date.

(5) "Eligible business" means a business that at the time of an initial Utah Works investment in the business by a Utah Works fund:

90 (a) has fewer than 300 employees;

91 (b) has less than \$10,000,000 in net income for the preceding taxable year;

92 (c) maintains the business's principal business operations in the state; and

93 (d) is described in one of the following NAICS codes:

94 (i) 11, Agriculture, Forestry, Fishing and Hunting;

95 (ii) 21, Mining, Quarrying, and Oil and Gas Extraction;

96 (iii) 22, Utilities;

97 (iv) 23, Construction;

98 (v) 31-33, Manufacturing;

99 (vi) 48-49, Transportation and Warehousing;

100 (vii) 54, Professional, Scientific, and Technical Services; or

101 (viii) 62, Health Care and Social Assistance of the 2017 North American Industry

102 Classification System of the federal Executive Office of the President, Office of Management
103 and Budget.

104 (6) (a) "Excess return" means the difference between:

105 (i) the present value of all Utah Works investments made by a Utah Works fund on the
106 day the Utah Works fund applies to exit the program under Section [63N-2-909](#), including the
107 present value of all distributions and gains from the Utah Works investments; and

108 (ii) the sum of the amount of the original Utah Works investment and an amount equal
109 to any projected increase in the equity holder's federal or state tax liability, including penalties
110 and interest, related to the equity holder's ownership, management, or operation of the Utah
111 Works fund.

112 (b) If the amount calculated in Subsection (6)(a) is less than zero, the excess return is
113 equal to zero.

114 (7) (a) "Full-time employee" means an employee that works at least 30 hours per week
115 throughout the year or meets the customary practices accepted by an industry as full-time.

116 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
117 office may make rules that establish additional hours or other criteria to determine what
118 constitutes a full-time employee.

119 (8) (a) "High wage" means a wage that is at least 100% of the county average wage.

120 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

office may make rules that establish additional criteria to determine what constitutes a high wage.

(9) "Investment authority" means the minimum amount of investment a Utah Works fund must make in eligible businesses in order for credit-eligible contributions to the Utah Works fund to qualify for a tax credit under Section [59-7-624](#) or [59-10-1041](#).

(10) (a) "New annual jobs" means the difference between:

(i) (A) the monthly average of full-time employees who are paid a high wage at an eligible business for the preceding calendar year; or

(B) if the preceding calendar year contains the initial Utah Works investment, the monthly average of full-time employees who are paid a high wage at an eligible business for the months including and after the initial Utah Works investment and before the end of the preceding calendar year; and

(ii) the number of full-time employees at the eligible business on the date of the initial Utah Works investment.

(b) If the amount calculated in Subsection (10)(a) is less than zero, the new annual jobs amount is equal to zero.

(11) "Offset" means the amount calculated for each annual report as described in Subsection [63N-2-907\(2\)\(b\)](#).

(12) "Opportunity zone" means a low-income census tract located in the state and designated by the United States Treasury Department as an opportunity zone.

(13) (a) "Principal business operations" means the location where at least 60% of a business's employees work or where employees that are paid at least 60% of a business's payroll work.

(b) For the purposes of this part, an out-of-state business that agrees to relocate employees to this state to establish the business's principal business operations in this state using the proceeds of a Utah Works investment is considered to have the business's principal business operations in this state if the business satisfies the requirements of Subsection (13)(a) within 180 days after receiving the Utah Works investment, unless the office agrees to a later date.

(14) "Program" means the provisions of this part applicable to a Utah Works fund.

(15) (a) "State reimbursement amount" means the difference between:

152 (i) a Utah Works fund's credit-eligible capital contributions; and
153 (ii) the sum of the annual offsets as reported in the Utah Works fund's exit report
154 described in Section [63N-2-909](#).
155 (b) If the amount calculated in Subsection (15)(a) is less than zero, the state
156 reimbursement amount is equal to zero.
157 (16) "Tax credit" means a tax credit created by Section [59-7-624](#) or [59-10-1041](#).
158 (17) "Tax credit certificate" means a certificate issued by the office that:
159 (a) lists the name of the person to which the office authorizes a tax credit;
160 (b) lists the person's taxpayer identification number;
161 (c) lists the amount of tax credit that the office authorizes the person to claim for the
162 taxable year; and
163 (d) may include other information as determined by the office.
164 (18) "Tier one job" means a new annual job held by an employee who:
165 (a) served in the active military, naval, or air service and who was discharged or
166 released under conditions other than dishonorable;
167 (b) suffers from a disability;
168 (c) was found guilty of a crime and sentenced by a court to a prison term; or
169 (d) was not a resident of Utah within the 12 months prior to holding the job.
170 (19) "Tier three job" means all new annual jobs that are not tier one jobs or tier two
171 jobs.
172 (20) "Tier two job" means a new annual job held by an employee who received or had
173 a family member who received, with neither still receiving, benefits under Utah Medicaid, Utah
174 Unemployment Insurance, the Utah Supplemental Nutrition Assistance Program, the Utah
175 Children's Health Insurance Program, Utah Head Start, or the Utah Family Employment
176 Program.
177 (21) "Utah Works fund" means a fund approved by the office under Section
178 [63N-2-903](#).
179 (22) "Utah Works investment" means:
180 (a) any capital or equity investment in an eligible business; or
181 (b) any loan made from the investment authority to an eligible business with a stated
182 maturity at least one year after the date of issuance.

Section 5. Section **63N-2-903** is enacted to read:

63N-2-903. Application, approval, and allocations.

(1) (a) A person seeking approval to establish a Utah Works fund shall submit an application to the office.

(b) The office shall begin accepting applications on November 1, 2019.

(2) An application submitted under Subsection (1) shall be in a form and in accordance with procedures prescribed by the office and shall include the following:

(a) the total investment authority sought by the applicant, which may not exceed \$40,000,000;

(b) a copy of the applicant's or an affiliate of the applicant's license as a federally licensed rural business investment company or as a federally licensed small business investment company, provided that any affiliate used to meet this requirement must have been an affiliate of the applicant or its affiliates for at least four years;

(c) evidence that before the date the application is submitted, the applicant or affiliates of the applicant have met the job creation requirements of any tax credit or similar state government program or grant agreement;

(d) a signed affidavit from each claimant that commits to make a credit-eligible capital contribution to the applicant, stating the amount of that commitment; and

(e) the sum of all credit-eligible capital contribution commitments described in Subsection (2)(d), which must equal 75% of the total investment authority sought by the applicant.

(3) The office shall:

(a) review and evaluate the applications submitted under this section within 30 days of receipt in the order in which the applications are received; and

(b) consider applications received on the same day to have been received simultaneously.

(4) (a) If, after review and evaluation of an application, the office determines that the application does not meet the requirements of Subsection (2), the office shall:

(i) deny the application; or

(ii) if the applicant complied with Subsection (2)(d):

(A) notify the applicant that the application was inadequate and allow the applicant to

214 provide additional information to the office to complete, clarify, or cure defects identified by
215 the office in the application; and

216 (B) inform the applicant that the additional information described in Subsection
217 (4)(a)(ii)(A) shall be received by the office within five days of the notice in order to be
218 considered.

219 (b) If an applicant submits additional information to the office in accordance with
220 Subsection (4)(a)(ii), the office shall:

221 (i) consider the application to have been received on the date the application was
222 originally received by the office; and

223 (ii) review and evaluate the additional information within 10 days of receiving the
224 additional information.

225 (5) If, after review and evaluation of an application submitted under this section and
226 any additional information submitted in accordance with Subsection (4)(a)(ii), the office
227 determines that the application meets the requirements of Subsection (2), the office shall:

228 (a) determine the amount of investment authority to award an applicant in accordance
229 with Subsection (6);

230 (b) provide to the applicant a written notice of approval of a Utah Works fund,
231 specifying the amount of the applicant's investment authority; and

232 (c) notify each claimant whose affidavit was included in the application under
233 Subsection (2)(d) that the claimant qualifies for a tax credit that will be issued in accordance
234 with Section [63N-2-904](#).

235 (6) (a) The office may not approve more than \$40,000,000 in total investment authority
236 and not more than \$30,000,000 in total credit-eligible contributions under this part.

237 (b) Subject to Subsections (6)(a) and (d), if an application is approved under
238 Subsection (5), the office shall approve the amount of investment authority requested on the
239 application.

240 (c) The office may continue to accept applications under this section until the amount
241 of approved investment authority reaches \$40,000,000.

242 (d) If the office approves multiple applications received simultaneously under
243 Subsection (3)(b) and the total amount of investment authority requested on those applications
244 is greater than the amount of investment authority remaining, the office shall proportionally

245 reduce the investment authority and credit-eligible capital contributions for each of these
246 applications as necessary to avoid exceeding the amount of investment authority and
247 credit-eligible capital contributions remaining.

248 (7) Within 65 days after the day on which a Utah Works fund receives approval under
249 Subsection (5)(b), the Utah Works fund shall:

250 (a) collect the total amount of committed credit-eligible capital contributions from each
251 claimant whose affidavit was included in the application under Subsection (2)(d);

252 (b) collect one or more cash equity investments contributed by affiliates of the Utah
253 Works fund, including employees, officers, and directors of such affiliates, that equal at least
254 10% of the Utah Works fund's investment authority;

255 (c) collect one or more cash investments that, when added to the amounts collected
256 under Subsections (7)(a) and (b), equal the Utah Works fund's investment authority; and

257 (d) provide sufficient documentation to the office to prove that the amounts described
258 in Subsections (7)(a) through (c) have been collected.

259 (8) If the Utah Works fund fails to fully comply with Subsection (7):

260 (a) the Utah Works fund's approval lapses and the corresponding investment authority
261 and credit-eligible capital contributions do not count toward the limits on the program size
262 described in Subsection (6)(a); and

263 (b) the office:

264 (i) shall first award lapsed investment authority pro rata to each Utah Works fund that
265 was awarded less than the requested investment authority under Subsection (6)(d), which a
266 Utah Works fund may allocate to the Utah Works fund's investors at the fund's discretion; and

267 (ii) may award any remaining investment authority to new applicants.

268 Section 6. Section **63N-2-904** is enacted to read:

269 **63N-2-904. Tax credit.**

270 (1) On the closing date, a claimant whose affidavit was included in an approved
271 application submitted under Section [63N-2-903](#) shall earn a vested tax credit equal to the
272 amount of the claimant's credit-eligible capital contribution to the Utah Works fund.

273 (2) In each of the taxable years that includes the fourth through sixth anniversaries of
274 the closing date, the office shall:

275 (a) issue a tax credit certificate to each approved claimant, specifying a tax credit

amount for the taxable year equal to one-third of the claimant's total credit-eligible capital contribution; and

(b) provide a report to the State Tax Commission listing each claimant that received a tax credit certificate under Subsection (2)(a) and the tax credit amount listed on the certificate.

(3) (a) A claimant may not claim a tax credit under this section unless the claimant has a tax credit certificate issued by the office.

(b) A claimant claiming a credit under this section shall retain a tax credit certificate the claimant receives from the office for the same time period a person is required to keep books and records under Section [59-1-1406](#).

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with the provisions of this part, the office shall make rules describing:

(a) the documentation requirements for a claimant to receive a tax credit certificate under this section; and

(b) administration of the program, including relevant timelines and deadlines.

Section 7. Section **63N-2-905** is enacted to read:

63N-2-905. Revocation of tax credit certificates.

(1) Except as provided in Subsection (2), the office shall revoke a tax credit certificate issued under Section [63N-2-904](#) if the Utah Works fund in which the credit-eligible capital contribution was made does any of the following before the Utah Works fund exits the program in accordance with Section [63N-2-909](#):

(a) fails to invest two-thirds of the Utah Works fund's investment authority in Utah Works investments in the state within two years of the closing date and 100% within three years;

(b) fails to maintain Utah Works investments in the state equal to 100% of the Utah Works fund's investment authority until the sixth anniversary of the closing date in accordance with this section;

(c) makes a distribution or payment that results in the Utah Works fund having less than 100% of the Utah Works fund's investment authority invested in Utah Work's investments in this state or available for investment in Utah Works investments and held in cash and other marketable securities;

(d) invests more than \$5,000,000 from the investment authority in the same eligible

business, including amounts invested in affiliates of the eligible business, exclusive of Utah Works investments made with repaid or redeemed Utah Works investments or interest or profits realized on the repaid or redeemed Utah Works investments; or

(e) makes a Utah Works investment in an eligible business that directly, or indirectly through an affiliate:

(i) owns or has the right to acquire an ownership interest in the Utah Works fund, an affiliate of the Utah Works fund, or an investor in the Utah Works fund; or

(ii) makes a loan to or an investment in the Utah Works fund, an affiliate of the Utah Works fund, or an investor in the Utah Works fund.

(2) (a) (i) For the purposes of Subsection (1), an investment is maintained even if the investment is sold or repaid if the Utah Works fund reinvests an amount equal to the capital returned or recovered by the fund from the original investment, excluding any profits realized, in other Utah Works investments in this state within 12 months of the receipt of such capital.

(ii) Amounts received periodically by a Utah Works fund are treated as continually invested in Utah Works investments if the amounts are reinvested in one or more Utah Works investments by the end of the following calendar year.

(iii) A Utah Works fund is not required to reinvest capital returned from Utah Works investments after the fifth anniversary of the closing date and such Utah Works investments are considered as being held continuously by the Utah Works fund through the seventh anniversary of the closing date.

(b) (i) Subsection (1)(e) does not apply to investments in publicly traded securities by an eligible business or an owner or affiliate of an eligible business.

(ii) Under Subsection (1)(e), a Utah Works fund is not considered an affiliate of an eligible business solely as a result of the Utah Works fund's Utah Works investment.

(3) (a) Before revoking one or more tax credit certificates under this section, the office shall notify the Utah Works fund of the reasons for the pending revocation.

(b) If the Utah Works fund corrects any violation outlined in the notice to the satisfaction of the office within 90 days after the day on which the notice was sent, the office may not revoke the tax credit certificate.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules that establish criteria to determine what constitutes a correction under

Subsection (3)(b).

(4) If a Utah Works fund's tax credit certificate is revoked under this section:

(a) (i) the Utah Works fund shall make a cash distribution to the office in an amount equal to the sum of all tax credits awarded to persons that have made credit-eligible contributions to the Utah Works fund; and

(ii) if the Utah Works fund is able to provide documentation to the office that proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the amount owed under Subsection (4)(a)(i) shall be reduced by the amount of the unclaimed tax credit;

(b) the Utah Works fund's investment authority and credit-eligible capital contributions shall not count toward the limits on the program size described in Subsection [63N-2-903\(6\)\(a\)](#); and

(c) (i) the office shall, if the office awards lapsed investment authority to a Utah Works fund, first award lapsed investment authority pro rata to each Utah Works fund that was awarded less than the requested investment authority under Subsection [63N-2-903\(6\)\(d\)](#), which a Utah Works fund may allocate to the Utah Works fund's investors at the Utah Works fund's discretion; and

(ii) the office may award any remaining investment authority to new applicants.

(5) The office may not revoke a tax credit certificate after a Utah Works fund has exited the program in accordance with Section [63N-2-909](#).

Section 8. Section **63N-2-906** is enacted to read:

63N-2-906. Request for determination.

(1) Before making a Utah Works investment, a Utah Works fund may request from the office a written determination as to whether the business in which a Utah Works fund proposes to invest is an eligible business.

(2) The office shall notify the Utah Works fund of the office's determination within 30 days after receipt of the request.

(3) If the office fails to notify the Utah Works fund of the office's determination in accordance with Subsection (2), the business in which the Utah Works fund proposes to invest shall be considered an eligible business.

Section 9. Section **63N-2-907** is enacted to read:

63N-2-907. Reporting obligations.

(1) Until the Utah Works fund has exited the program in accordance with Section 63N-2-909, a Utah Works fund shall annually submit to the office on or before the last day of February a report for the previous calendar year.

(2) (a) The annual report shall include documentation of the Utah Works fund's Utah Works investments, including:

(i) a bank statement evidencing each Utah Works investment;

(ii) the name, location, and industry of each business receiving a Utah Works investment, including a determination letter provided as described in Section 63N-2-906 or evidence that the business qualified as an eligible business at the time the investment was made;

(iii) the number of new annual jobs at each eligible business for the preceding calendar year, accompanied by a report from a third-party accounting firm attesting that the number of new annual jobs was calculated in accordance with procedures approved by the office;

(iv) the offset, calculated annually and in accordance with Subsection (2)(b); and

(v) any other information required by the office.

(b) (i) The offset shall equal the sum of the following:

(A) the product of the number of new annual jobs that are tier one jobs and \$40,000;

(B) the product of the number of new annual jobs that are tier two jobs and \$30,000;

and

(C) the product of the number of new annual jobs that are tier three jobs and \$20,000.

(ii) A \$10,000 bonus shall be added to the offset for each of the following:

(A) each new annual job at an eligible business whose principal business operations are located in an opportunity zone; and

(B) each new annual job held by an employee who has received workforce training either internally or externally, provided such training is verified by the president, chief executive officer, chief financial officer, or similar officer of the eligible business and approved by the office.

(3) Within 60 days of receipt of an annual report, the office shall provide written confirmation to the Utah Works fund of the offset and the number of new annual jobs the Utah Works fund has been credited with for the previous calendar year.

(4) By the fifth business day after the third anniversary of the closing date, a Utah

400 Works fund shall submit a report to the office providing evidence that the Utah Works fund is
401 in compliance with the investment requirements of Section [63N-2-905](#).

402 Section 10. Section **63N-2-908** is enacted to read:

403 **63N-2-908. Annual fee.**

404 (1) The office shall calculate an annual fee to be paid by each Utah Works fund by
405 dividing \$50,000 by the number of Utah Works funds approved under this part and shall notify
406 each Utah Works fund of the amount of the annual fee.

407 (2) (a) The initial annual fee shall be due and payable to the office along with the
408 evidence of receipt of the cash investment in the Utah Works fund as described in Subsection
409 [63N-2-903\(7\)\(d\)](#).

410 (b) After the initial annual fee, an annual fee shall be due and payable to the office on
411 or before the last day of February of each year.

412 (c) An annual fee is not required once a Utah Works fund has exited the program under
413 Section [63N-2-909](#).

414 (3) To maintain an aggregate annual fee of \$50,000, the office shall recalculate the
415 annual fee as needed upon the lapse of any approval under Subsection [63N-2-903\(8\)](#), the
416 revocation of a tax credit certificate under Section [63N-2-905](#), or a Utah Works fund's exit
417 from the program under Section [63N-2-909](#).

418 (4) The annual fee collected under this section shall be deposited into the General Fund
419 as a dedicated credit for use by the office to implement this part.

420 Section 11. Section **63N-2-909** is enacted to read:

421 **63N-2-909. Exit.**

422 (1) On or after the seventh anniversary of the closing date, a Utah Works fund may
423 apply to the office to exit the program and no longer be subject to this part.

424 (2) An application submitted under Subsection (1) shall be in a form and in accordance
425 with procedures prescribed by the office and shall include a calculation of the state
426 reimbursement amount and the total of all offsets reported in annual reports pursuant to
427 Subsection [63N-2-907\(2\)\(a\)](#).

428 (3) In evaluating the exit application, if no tax credit certificates have been revoked and
429 the Utah Works fund has not received a notice of revocation that has remained uncorrected
430 under Subsection [63N-2-905\(3\)\(b\)](#), the Utah Works fund is eligible for exit.

431 (4) (a) The office shall respond to the application within 30 days of receipt and include
432 confirmation of the state reimbursement amount.

433 (b) The office shall not unreasonably deny an application submitted under this section.

434 (c) If the office denies the application, the office shall provide the reasons for the
435 determination to the Utah Works fund.

436 (5) Within 60 days after the day on which the confirmation of the state reimbursement
437 amount is received by the Utah Works fund, the Utah Works fund shall make a cash
438 distribution to the state in an amount equal to the lesser of:

439 (a) the state reimbursement amount; and

440 (b) the excess return.

441 (6) The office shall notify the Utah Works fund once payments equal to the amount
442 described in Subsection (5) have been received.

443 (7) Any amounts collected under this section shall be deposited into the General Fund.